



General Exemption Order

Draft Position Paper

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1 Request for comment

The Department of Environment, Land, Water and Planning (the Department) has developed this draft position paper to set out the Department's proposed policy positions on how to improve the efficiency and effectiveness of the Victorian electricity licence exemptions framework.

This paper, and the policy positions outlined herein, have been informed by submissions received in response to the Department's General Exemption Order Issues Paper released in June 2015. The Department thanks all industry groups, community and renewable energy groups and consumer representative groups for their valuable contributions to this process. The Department also acknowledges that parallel work is being undertaken as part of the Essential Services Commission's (ESC) *Modernising Victoria's Energy Licence Framework* review.

Further submissions are invited in response to the matters raised in this paper.

How to provide us with your comments

Written responses to the draft position paper are welcomed by 5pm on 22 August 2016.

Responses are to be submitted by email to: geo@delwp.vic.gov.au.

Any queries should be directed to Joy D'Souza, Senior Policy Officer, National Energy Market Development on 03 8392 7635 or Joy.D'Souza@delwp.vic.gov.au or Alex Badham, Acting Director, National Energy Market Development on 03 8392 7625 or Alex.Badham@delwp.vic.gov.au.

Publication of submissions

This paper and any submissions or parts thereof might be released pursuant to the requirements of the *Freedom of Information Act 1982 (Vic)*. Any requests for public access to a submission will be determined in accordance with the Act.

Next steps

Comments received through the draft position paper consultation process will help to inform the final position paper for release in late 2016.

Draft Position Paper released	2016
Submissions due to Department	22 August 2016
Final Position Paper (subject to government approval)	Late 2016

2 Introduction

In June 2015, the Department¹ released its General Exemption Order Issues Paper. The paper outlined the Department's high level understanding of the key issues raised by stakeholders on current impediments to the effectiveness of the General Exemption Order (GEO) and sought stakeholder comments on how the exemptions framework may be improved.

The Department's issues paper was released in tandem with the ESC's *Modernising Victoria's Energy Licence Framework* Issues Paper. The Department acknowledges that both reviews are inter-related and continues to work closely with the ESC to ensure that the outcomes of both reviews align.

2.1 Purpose

This paper outlines the high-level draft policy positions of the Department based on stakeholder feedback. The paper follows a similar structure to the issues paper and considers the key areas currently impeding the effectiveness of the Victorian exemptions framework, namely:

1. Classifying retail, network and generation exemptions
2. Consumer protections
3. Choice of retailer
4. Obligations on embedded network operators
5. Pricing
6. Enforcement
7. Dispute resolution
8. Alternative energy selling
9. Community energy projects
10. Conclusion

These issues form the basis of chapters three to 12 of this paper. Each chapter will outline the key issue, submissions on the issue, and the Department's consideration of and proposed position on the issue.

The issues paper asked a series of detailed questions and stakeholder responses varied (depending on relevance to the stakeholder and whether or not they expressed a view). This paper does not seek to address each question raised in the issues paper; rather it will address key issues holistically with a focus on matters of importance to stakeholders.

Submissions on this draft position paper will help guide the settlement of final policy positions on the changes required to improve the efficiency and effectiveness of the Victorian exemptions framework.

2.2 The Victorian Licensing and Exemptions Framework

2.2.1 Licensing

Section 16 of the *Electricity Industry Act 2000* (EIA) states that a person must not engage in the generation of electricity for supply or sale or the transmission, distribution, supply or sale of electricity unless that person holds a licence issued by the ESC or is exempted from the requirement to hold a licence.

¹ The Issues Paper was released by the Department of Economic Development, Jobs, Transport and Resources. Energy Policy and Programs Branch became part of the Department of Environment, Land, Water and Planning on 1 July 2016.

2.2.2 Exemptions

Section 17 of the EIA states that the Governor in Council may exempt a person from the requirement to obtain a licence through an Order in Council. An Order in Council that provides an entity with an exemption will typically list the entity, the customer, and the activities that are exempt including the site that is covered by the exemption. A typical exemption is one where a large business is supplying to another large business, usually due to convenience (for example, over-the-fence arrangements between related parties).

The Department receives exemption applications and can recommend to the Minister for Energy, Environment and Climate Change that an exemption should be granted. Exemptions are assessed on a case by case basis. If an exemption has been previously provided for certain activities, it is no guarantee that another similar application will receive the same assessment.

The above relates to specific exemptions. In addition to this, the GEO creates a category of deemed exemptions, which can apply to persons supplying or selling electricity to residential or business customers.

2.2.3 General Exemption Order

The GEO is an Order in Council made under section 17 of the EIA and published in the Government Gazette on 1 May 2002. Minor amendments were made to the GEO in 2008 and 2010.

The schedule to the GEO provides for categories of deemed exemptions, which do not require an application to the Department for the exemption to apply.

Rather, entities must satisfy themselves that they fall within the activities covered by the GEO, before undertaking the generation of electricity for supply or sale or the transmission, distribution, supply or sale of electricity without a licence.

2.2.4 Licence versus exemption

Under the EIA, the ESC has the power to grant or refuse applications for licences, place conditions on licences, and vary, transfer or revoke licences. The ESC is also responsible for monitoring compliance with licence conditions and may enforce those conditions using powers conferred by the EIA and the *Essential Services Commission Act 2001*.

The requirement for an entity to hold a licence provides the mechanism by which appropriate standards for electricity supply in Victoria are established, maintained and enforced. This safeguards the overall performance of the market, and helps to maintain consumer confidence in the industry.

An electricity licence is normally required where an entity's:

- main business is the sale or distribution of electricity to customers;
- main relationship with its customers involves the sale or distribution of electricity; and
- business is to sell or distribute a large amount of electricity across a number of sites to small, medium and large market customers.

The scale of the planned activities and/or the relationship between the energy provider and customer may mean, however, that an exemption from the obligation to hold a licence is the more appropriate authorising instrument.

An exemption is more likely to be appropriate where electricity provision is:

- 'incidental' to the main business;
- provided as a community service;
- provided to a defined group of customers at one site.

On-selling

On-selling or reselling occurs where an entity purchases electricity from a licensed retailer and then sells it to a customer through an embedded network, mainly found in shopping centres, apartment

buildings, retirement villages or caravan parks. In these instances the main relationship between the on-seller (or exempt seller) and the customer does not involve sale of energy.

On-selling is generally authorised by exemption, rather than licence. Like a licence, an exemption allows an exempt seller to sell electricity. However unlike a licence, an exemption limits the on-selling activity to a defined class (or classes) of customers, usually at a specific site (or sites). These restrictions are set out in the terms of the exemption. Exempt sellers still have to follow strict conditions and meet a range of obligations to their customers, but generally the regulatory conditions are more restricted than those of licensed retailers.

Embedded networks

Similarly, an entity that engages in electricity distribution through an embedded network (an embedded network operator) generally operates under an exemption. Electricity distribution is generally incidental to the main purpose of the business of the embedded network operator, such as networks within caravan parks, apartments, industrial parks and shopping centers.

A network exemption can relieve the embedded network operator from the requirement to comply with certain technical requirements that a larger, licensed network operator may need to abide by.

Growth in exempt activities

The Department notes that the number of Victorian businesses operating under exemptions is likely to be significant. For those jurisdictions under the National Energy Customer Framework, the AER has reported² that, as at November 2015, 57 businesses held authorisations to sell electricity, 90 businesses held individual exemptions (mainly covering the sale of energy through solar power purchase agreements) and over 1500 businesses held registered exemptions (typically to on-sell energy within an embedded network). As discussed further in this paper, the changing nature of the energy market, including the growth of embedded networks and alternative energy business models, will mean change for the traditional authorising frameworks for electricity generation, distribution, supply and sale.

2.3 Principles

The Department sees a need to set out some principles to guide the application of changes and reforms to the GEO. The purpose of the GEO itself is to disapply or apply, as appropriate, aspects of technical, economic and consumer protection regulation to a range of electricity activities which are common enough to warrant consistent treatment, but are not thought to require the application of the full energy regulatory regime as applied to licensed businesses.

In determining what regulatory treatments should be applied to exempt electricity activities, the Department aims to ensure that customers of exempt sellers or exempt network operators are not unreasonably disadvantaged compared to customers of licensed retailers or distributors. The Department considers the following principles to be of relevance.

Divergence from standard regulatory arrangements

In some instances, divergence from standard regulatory arrangements is necessary to reflect the different circumstances of exempt entities and the relationships they have with their customers.

Exempt sellers generally differ from licensed retailers in that they may lack the economies of scale and scope from which retailers benefit and may not sell electricity as their core business. Exempt entities may provide electricity as either a matter of convenience, incidentally or simply in order to minimise energy costs. The development of emerging and innovative electricity supply business models (such as solar power purchase arrangements) should also not be unduly constrained by regulatory requirements developed for traditional energy retail and distribution activities.

Accordingly, requiring such entities to comply with the 'full suite' of requirements of the EIA and industry licence conditions, and related Codes and guidelines, may be onerous or inappropriate. For example, imposing a requirement to have and publish standing offers or make available feed-in tariffs may not be warranted in the circumstances described above.

Access to consumer protections

² AER, *State of the Energy Market 2015*, page 124

Saying this, the exemptions framework should also be designed to give customers of exempt entities a comparable level of consumer protections and service as those afforded to customer of licensed providers. For example, such customers should also be able to access an independent, free dispute resolution service.

This is not just a matter of equity, but recognises that these customers of exempt entities can be some of the most vulnerable in society and in need of appropriate protections.

Choice of retailer

All Victorian electricity customers should be able to choose an electricity retailer of their choice including customers located within embedded networks. The Department acknowledges, however, that sometimes customers located in embedded networks find it difficult to exercise this choice due to reasons beyond their control. While the exemptions framework should encourage a customer's access to retailer choice it should also appropriately protect consumers where this is not possible.

3 Classifying Exemptions

3.1 Introduction

The GEO contains one class of retail activity that is subject to deemed exemption, that being the metered intermediary sale of electricity within the limits of the premises owned or occupied by the person engaging in that activity.

The GEO also contains one class of distribution and supply activity that is subject to deemed exemption, that being the intermediary distribution or supply of electricity to a short term resident, long term resident, small business customer or large business customer within the limits of the premises owned or occupied by the person engaging in that activity.

Further to this the GEO contains a class of generation activity that is subject to a deemed exemption, that being the generation of electricity for supply or sale where the total output by that person (whether or not with another person), using a generator or generators connected to the transmission network or distribution network at a common point, is less than 30MW.

Recently the Victorian Government amended the GEO to include a deemed exemption class which covers the generation, distribution, supply and sale of electricity under small customer power purchase arrangements. This exemption allows for:

- a. the generation or distribution of electricity on premises not owned or occupied by the exempt person; and
- b. the supply or sale of electricity to:
 - i. the owner or occupier of the premises on which the generation occurs (the customer); or
 - ii. a licensed retailer.

This exemption for power purchase arrangements is further discussed in chapter 10, *Alternative Energy Selling*.

The above classes of deemed exemption are also subject to conditions that may impact on an entity's eligibility. If an entity does not comply with its conditions of exemption it is effectively operating without a licence, and may be subject to penalty.

3.2 Stakeholder consultation

During the consultation phase, the Department engaged with industry groups, consumer representative groups and community and renewable energy groups on the effectiveness of the existing GEO classifications of deemed retail, distribution and supply and generation exemptions.

The key issues raised by stakeholders were:

- uncertainty and confusion with regard to what activities are exempted;

- inconsistencies between the way in which exempt entities are meeting the conditions of their exemption;
- a lack of clarity and consistency between the Australian Energy Regulator's (AER) exemptions framework and the Victorian exemptions framework;
- an inability to monitor exemptions activity; and
- a lack of flexibility in response to emerging energy technologies, alternative energy selling business models and community energy projects.

Stakeholders that addressed the issue of how best to classify retail, distribution and supply and generation exemptions were overwhelmingly supportive of bringing the GEO in line with the AER exemptions framework. That would mean establishing various classes of deemed and registrable exemptions as well as by granting exemptions on an individual basis.

3.3 The AER's exemption framework

What does the AERs framework look like?

Instruments

The AER administers two relevant exemption instruments:

- The *Retail Exempt Selling Guideline* sets out the activities which are exempt from the requirement to obtain a retailer authorisation under the National Energy Retail Law (**does not** apply in Victoria); and
- The *Network Service Provider Registration Exemption Guideline* sets out what energy transmission and distribution activities are exempt from the requirement to register in the National Electricity Market (NEM) as a network service provider (**does** apply in Victoria, in addition to the GEO).

Deemed Exemption

Entities are 'deemed' to fall within a particular class of exemption, however, there is still an obligation to abide by the conditions attached to the relevant class of exemption. Entities eligible for a deemed exemption need not apply to or register with, the AER.

Registrable Exemption

Entities eligible for a registrable exemption, need not apply to the AER. However, an eligible entity must complete an online registration form and submit it to the AER. Once it has done this, and the entity is placed on the AER's public register, the exemption will come into effect. Entities need to abide by the conditions attached to the relevant class of registrable exemption.

Individual Exemptions

If an entity's activities fall outside one of the classes of exemption, it may apply to the AER for an individual exemption to cover its activities. Individual exemptions are tailored to specific situations, with conditions attached to the exemption where necessary (the AER decides on any appropriate conditions when assessing the application).

The AER's exemptions framework post-dates the current Victorian framework by over a decade, and has been subject to extensive consultation with stakeholders in its development, as well as further refinement in light of changing energy market conditions. Furthermore, the AER framework itself draws upon principles set out by the ESC in its 2006 review into small-scale licensing.

3.4 Proposed approach

The Department recognises that the way in which the GEO classifies deemed exemptions is no longer fit for purpose. The Department supports the move to bring the GEO in line with the AER's exemptions framework. This would be achieved by:

- establishing registrable categories of exemptions; and
- tailoring classes of deemed and registrable exemptions.

Individual exemptions would still be issued on a case by case basis.

The absence of registration requirements from the GEO means that there is very little information available to government, the regulator (the ESC) and the general public on exempt energy activities in Victoria. It is the Department's view that it and the regulator should have greater oversight and understanding on the activities of exempt providers and that introducing registrable classes of exemptions will facilitate this. As noted below, the Department proposes to adopt registrable exemption classes based on existing AER categories. Generally, 'larger-scale' exempt entities supplying or selling metered electricity to more than ten customers or large customers, or exempt entities supplying or selling electricity to 'longer-term' residents in places such as caravan parks and retirement villages, will be required to register.

The Department also considers that there are advantages of having more specific exemption classes for distribution and retail activities (rather than general classes). Having more specific exemption classes should increase clarity regarding what activities are exempted, leaving less opportunity for an entity to question whether they fall into a category of exemption or not. It will also assist the regulator in pursuing enforcement action if it is clear that an entity is acting outside of the GEO and therefore generating, distributing or selling electricity without a licence.

Should registrable classes of exemptions be introduced, the Department proposes that the ESC be tasked with establishing and administering a public registration system. There will need to be a transitional period in which entities operating under the protection of the existing GEO are required to register on the public registration data base. The Department proposes that the transitional period for exempt entities to register be six months from the point at which the ESC establishes the public registration system.

The Department also considers there is a need to tailor deemed and registrable exemption classes to reflect Victoria's needs. It is appropriate, therefore, to take the AER approach as a starting point, and refine the approach to suit current circumstances in Victoria. This acknowledges the Victorian Government's position that it will not implement the national energy customer framework at this time and will ensure Victorian customers remain front and centre of energy market regulation.

The Department also recognises that the traditional electricity supply model that has existed across the national electricity market and in Victoria is being challenged. Certain emerging technologies and businesses are not covered by the current Victorian licensing framework, such as solar power purchase agreements (PPAs) and solar leasing products, but are becoming increasingly available to Victorian electricity consumers.

Moving forward, as these 'behind the meter' products and services for electricity supply become more common as emerging technologies become more affordable and prevalent in the market, the Victorian exemptions framework may need to adapt. The Department notes that it is important to closely monitor these challenges going forward to ensure the framework remains fit for purpose for all Victorian electricity consumers. This may include transitioning these activities, as they become more prevalent, to regulation under licence issued by the ESC under the EIA. The Department understands that the ESC will examine this issue further in its *Modernising Victoria's Energy Licence Framework* review.

3.4.1 Classifying retail, distribution and generation exemptions

The Department's proposed retail, distribution and supply and generation exemption classes, outlined below, are based on existing AER categories with some omissions and some additions.

The classification codes are as follows:

- the “V” is intended to distinguish these Victorian exemption categories from their counterparts in AER guidelines
- “R” refers to registrable exemptions
- “D” refers to deemed exemptions
- “N” refers to network specific exemptions
- “G” refers to generation specific exemptions“

The Department also proposes specific ‘multiple activity’ exemption categories to address certain new developments in the market such as community energy projects and solar PPAs.

3.4.2 Retail exemption categories

Table 1 Proposed retail exemption categories

CLASS	ACTIVITY
VR1	Persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate
VR2	Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate.
VR3	Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate.
VR4	Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there
VR5	Persons selling metered energy to large customers
VR6	Persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate.
VD1	Persons selling metered energy to fewer than ten small commercial/retail customers within the limits of a site that they own, occupy or operate.
VD2	Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate.
VD3	Persons selling metered energy to occupants of holiday accommodation on a short-term basis.
VD4	Persons selling energy to a related company.
VD5	Persons selling energy to customers in conjunction with, or ancillary to, the provision of telecommunications information services.
VD6	Government agencies, other than housing authorities, selling metered energy to non-residential customers.

In summary, the Department proposes adopting all of the AER’s registrable exemption classes and applying them to the Victorian retail exemptions framework, with the exception of one. This one being the exemption which permits entities to sell metered energy to small customers at a site or premise adjacent to a site that they own, occupy or operate. For the reasons discussed in 6.3.4 of this paper,

the Department does not consider it appropriate at this stage to permit supply to adjacent properties on a general basis, but will continue to consider individual projects on a case by case basis.

The Department also proposes adopting most of the AER's deemed exemption classes to the Victorian retail exemptions framework. However, the Department has not included the exemption classes specifically relating to gas and entities selling unmetered energy in other Australian jurisdictions.

The Department notes that VD5 and VD6 are activities additional to the activities currently captured by the GEO. The Department's draft position is to incorporate these categories in order to maintain consistency with the AER's exemptions framework.

The Department and the ESC will also establish an *Exempt Selling Guideline* to assist an entity with assessing its eligibility to operate under a retail exemption.

3.4.3 Network exemption categories

Table 2 Proposed network exemption categories

CLASS	ACTIVITY
VNR1	Persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate
VNR2	Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate.
VNR3	Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate.
VNR4	Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there
VNR5	Persons selling metered energy to large customers
VNR6	Persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate.
VND1	Persons selling metered energy to fewer than ten small commercial/retail customers within the limits of a site that they own, occupy or operate.
VND2	Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate.
VND3	Persons selling metered energy to occupants of holiday accommodation on a short-term basis.
VND4	Persons selling energy to a related company.
VND5	Persons selling energy to customers in conjunction with, or ancillary to, the provision of telecommunications information services.

VND6

Government agencies, other than housing authorities, selling metered energy to non-residential customers.

In summary, the Department proposes adopting all of the AER's registrable exemption classes and applying them to the Victorian network exemptions framework, with the exception of one. This one being the exemption which permits entities to distribute energy to small customers at a site or premise adjacent to a site that they own, occupy or operate. For the reasons discussed in 6.3.4 of this paper, the Department does not consider it appropriate at this stage to permit supply to adjacent properties on a general basis, but will continue to consider individual projects on a case by case basis.

The Department also proposes adopting most of the AER's deemed exemption classes to the Victorian network exemptions framework. However the Department has not included the exemption classes specifically relating to gas and entities distributing unmetered energy in other Australian jurisdictions.

The Department notes that VND5 and VND6 are activities additional to the activities currently captured by the GEO. The Department's draft position is to incorporate these categories in order to maintain consistency with the AER's exemptions framework.

3.4.4 Generation exemption category

Table 3 Proposed generation exemption category

CLASS	ACTIVITY
VGD1	Persons generating electricity for supply or sale where the total output by that person (whether or not with another person), using a generator or generators connected to the transmission network or distribution network at a common point, is less than 30MW.

The Department proposes no change be made to the generation of electricity exemption which allows for supply or sale where the total output by that person (whether or not with another person), using a generator or generators connected to the transmission network or distribution network at a common point, is less than 30MW. This is a long standing exemption reflecting generator registration requirements in the National Electricity Market. It covers, amongst other things, 'traditional' generation of electricity through solar panels owned by the home-owner where excess generation is sold to by that person to the person's retailer .

3.4.5 Multiple exemptions categories

Table 4 Proposed multiple exemptions categories

CLASS	ACTIVITY
VMR1 (Solar PPAs)	Persons generating or distributing electricity on premises not owned or occupied by the exempt person; and Persons supplying or selling electricity: <ul style="list-style-type: none">i. to the owner or occupier of the premises on which the generation occurs (the Customer); or aii. to a licensed retailer.
VMR2 (Community energy projects)	<i>[Persons generating, distributing or selling electricity as part of a community energy project.]</i>

The Department also proposes retaining the existing exemption which covers the generation, distribution, supply and sale of electricity under a solar power purchase agreement. The Department proposes, however, moving the activities covered by this exemption to a registrable class exemption (VMR1) and seeks feedback on this matter.

The Department proposes to introduce a new registrable exemption category covering activities associated with community energy projects. Again, the Department specifically requests feedback on the proposed category, including regarding how 'community energy project' should be defined.

Both these exemption categories are discussed in more detail in chapters 10 and 11.

3.5 Recommendations

Those undertaking the following activities should continue to be exempt under the GEO from the requirement to hold a licence under section 16 of the *Electricity Industry Act 2000*:

1. the intermediary distribution and supply of electricity;
2. the intermediary sale of electricity; and
3. small-scale generation activities.

The General Exemption Order should, however, be amended to establish 'registrable' categories of exemptions, in addition to deemed exemptions and individual exemptions.

New exempt entities wishing to operate under a registrable exemption will need to register their activities on the public registration database, to be established by the ESC. The benefit of the exemption will come into effect upon registering.

Existing exempt entities already operating under what will be a registrable exemption category will have a six month period to register on the ESC's public registration database.

In addition, deemed and registrable exemption categories will be divided into exemption classes tailored to specific activities, based on the AER's current exemption categories as adapted to reflect Victoria's needs. This will include specific 'multiple activity' exemption categories to address certain new developments in the market such as community energy projects and solar PPAs.

4 Consumer Protections

4.1 Introduction

In its issues paper, the Department canvassed how consumers may benefit from amendments to the GEO to specify what consumer protections should apply to consumers, particularly those in embedded networks,³ supplied with grid sourced electricity, and the way this may be achieved.

As previously noted, the GEO allows for the sale of metered electricity within an embedded network without the exempt seller holding a retail licence. It is a condition of the retail exemption that an entity complies with "applicable provisions of the Retail Code". The Retail Code or Energy Retail Code (ERC) referred to, is an ESC-administered Code that provides for the minimum terms and conditions of sale between an energy retailer and a customer. The ERC contains important protections and places obligations on energy retailers to:

- offer a payment plan and hardship assistance in the case of financial difficulties;
- provide consumers with an energy bill and the minimum content/information to be included on that the energy bill; and
- provide an energy bill based on meter reads (or reasonable estimates).

³ Note, the discussion in this Chapter and subsequent chapters focuses on consumer protections for supply and sale of electricity through embedded networks. Chapters 10 and 11 discuss consumer protections for customers receiving supply of electricity through alternative energy projects (solar PPAs) or community energy projects.

It also sets out rules regarding disconnection, reconnection and treatment of customers on life support equipment.

These protections are not explicitly listed as exemption conditions under the GEO and therefore their 'applicability' to the sale of electricity by an exempt seller to its customer is subject to interpretation and dispute.

4.2 Stakeholder consultation

During the consultation phase, the Department engaged with industry groups, consumer representative groups and community and renewable energy groups on how the GEO could better afford consumer protections to customers of exempt sellers.

The key issues raised by stakeholder were:

- customers of exempt sellers are often provided with a sub-standard level of consumer protection when compared to customers of licensed retailers;
- customers of exempt sellers do not have free access to assistance from an independent, third party in the event of a dispute arising with their exempt seller;
- exempt sellers are confused and uncertain about what 'applicable provisions' from the ERC they have to comply with; and
- there is a lack of consistency between the AER exemptions framework and the Victorian exemptions framework which adds administrative burden to exempt sellers operating in other Australian jurisdictions.

Stakeholders that addressed the issue were all supportive of clarifying and/or specifying what consumer protections are available to customers of exempt sellers. Most submissions argued that the requirement for an exempt seller to 'observe all applicable provisions of the Retail Code' is too vague and subject to interpretation by an exempt seller and its customers.

Embedded network operators and exempt sellers that made a submission to the Department were also supportive of making improvements to the GEO to clearly identify the level of service they have to provide their customers. Embedded network operators and exempt sellers highlighted that a consistent approach with the national exemptions framework would be beneficial to providers operating in other Australian jurisdictions.

4.3 Proposed approach

4.3.1 Tailoring of consumer protections

The Department supports moves to ensure that customers of exempt sellers are given a comparable level of protection as customers of licensed retailers, and that these protections are clearly specified.

The purpose of the Victorian retail exemption regime is to facilitate different degrees of regulation for different types of energy activity, to allow a divergence of obligations between licensed retailers and exempt sellers, and even amongst exempt selling entities themselves, where appropriate. The regulatory regime must establish the correct balance between ensuring appropriate levels of consumer protections and imposing excessive or inappropriate regulatory burdens.

The Department acknowledges that in some instances it may not be practicable to require exempt sellers to provide a 'full suite' of protections to their customers and will take this into account in establishing relevant conditions. For example, residential, long term, customers of exempt sellers require the greatest level of protection and should receive specific protections such as flexible payment plans if they identify themselves as experiencing financial difficulty, whereas short-term, holiday residents do not require the full suite of consumer protections such as hardship support. Under the ERC, retail customer protections are not generally extended to large business customers, and similarly, have mostly not been extended to large exempt customers under the exemptions framework.

The Department proposes that a 'core set' of general conditions for exempt sellers be specified, based on the conditions imposed on licensed Victorian retailers. The Department considers that it is

practicable for all exempt sellers to provide a small customer with a core set of consumer protections, regardless of other factors (such as the size of the network, the size of the customer base or the configuration of the embedded network). Access to a core set of consumer protections is particularly important where customers have no choice but to purchase their electricity from their exempt seller.

The Department also proposes that additional conditions for particular classes of exempt sellers may be specified, to reflect the nature of the exempt activity, including the scale of the activity and customer type. This will assist in addressing submissions from stakeholders which suggest that:

- the scale and scope of the exempt seller operations is an obstacle preventing exempt sellers from providing customers with a full suite of consumer protections (that is, many exempt sellers operate on a small scale, each servicing only a small number of customers and therefore may not have the resources to meet certain ERC obligations such as hardship programs).
- consumer protections need to be varied particularly if customers choose to purchase their electricity from that exempt seller.

4.3.2 Specification of consumer protections

Two approaches could be taken to the specification of consumer protections to apply to exempt seller categories.

The present approach (under the current GEO) is that of making reference in the exemption instrument to existing general regulatory codes and guidelines, to apply as relevant to exemption categories.

The second is that taken by the AER in its *Retail Exempt Selling Guideline*, whereby specific conditions are set out in the exemption instrument itself.

The former has the benefit of maintaining consistency with general energy regulatory requirements over time, while the virtue of the latter is in its clarity and specificity of application of rules to exempt entities.

The Victorian regulatory framework is subject to continual refinements and adjustments, many of which will be of relevance to exempt suppliers too. For example, the ESC has recently completed its inquiry into energy hardship issues, and will be reviewing the ERC to bring it into line with current best practice.

Given this, it is the Department's preference to continue with the present approach but to refer to the ESC the role of determining which specific provisions of the ERC (core and additional) should apply to exempt seller classes. This will clearly and precisely outline the minimum obligations of an exempt seller and in doing so, outline the rights of customers.

It is acknowledged that this approach will necessarily maintain the split between the instrument of exemption – the GEO – and the instrument specifying the substantial conditions of the exemption. For this reason, it is also proposed that exemption guidelines be produced to provide a cohesive guide for energy consumers and exempt suppliers on their rights and obligations.

4.4 Recommendations

The Department supports the need to clarify and specify what consumer protections are available to consumers purchasing electricity from an exempt seller. The ESC will be referred the task of specifying which provisions of the ERC (and other codes and guidelines as necessary) will apply to all exempt sellers (as core protections) and particular classes of exempt sellers (as additional protections).

5 Choice of Retailer

5.1 Introduction

In Victoria, full retail contestability was introduced in January 2002, meaning that all residential and small business consumers should be able to access the retailer of their choosing. The premise of effective competition in a deregulated energy market relies on fully informed and confident customers choosing an energy offer that best suits their consumption volume and pattern.

The Department considers that retailer choice should extend to customers located in embedded networks, wherever that choice is practicable. For these customers this choice encompasses that between obtaining their electricity supply from their exempt seller or a licensed electricity retailer.

The Department understands, however, that in practice customers within embedded networks find it difficult to exercise this choice. This may be due to network configuration, access to individual meters (meaning that the customer has its own meter that can be read by a retailer other than the exempt seller), and the type of meters in place at the premises. These factors are usually determined at the time a building is constructed, and reconfiguration may be expensive and therefore uneconomic.

If a customer does find a retailer that is willing to sell the customer electricity, the customer has to arrange for the removal of the embedded network meter and the installation of a meter from the distribution network service provider. This meter will be assigned a National Meter Identifier (NMI) and be visible in the settlement process in addition to the meter used to supply the embedded network. The costs of replacing a meter can be high enough to discourage customer choice within embedded networks, particularly for tenants or customers experiencing financial hardship.

5.2 Stakeholder consultation

During the consultation phase, the Department engaged with industry groups, consumer representative groups and community and renewable energy groups on how it could better facilitate customers of exempt sellers accessing the retailer of their choosing.

The key issues raised by consumer representative groups were:

- customers are not aware of their right to exit their embedded network and access a retailer of their choice;
- customers who are aware and who have attempted to exit their embedded network have faced practical barriers when attempting to transfer to a licensed retailer; and
- the uncertainty and inconsistency associated with which party is responsible for the expenses involved with changing metering, wiring, access to the building/site.

Embedded network operators and exempt sellers were generally divided on the topic of increasing retailer choice within embedded networks. Embedded network operators and exempt sellers recognise that switching out of an embedded network may be difficult for customers residing within an embedded network, however they argued that this is not the fault of the embedded network provider.

5.3 Proposed approach

In principle, the Department supports moves to better facilitate all customers, including those in embedded networks, choosing an electricity retailer of their choice.

5.3.1 Disclosure of information and explicit informed consent

The AER's retail exemptions framework includes requirements which assist customers located in embedded networks transferring to an authorised retailer. That is, where choice is available, an exempt seller is prohibited from preventing a customer from choosing to buy electricity from an authorised energy retailer.

This is similar to the current approach in the GEO, which requires an exempt seller to inform business customers in writing that the customer may purchase electricity from a licensed electricity retailer of the customer's choice, when the exempt seller commences selling electricity to the customer.

Some stakeholders have argued that written notice should be provided prior to the customer entering into the contract of sale or residential tenancy agreement for the relevant premises.

The reasons for this are twofold, as:

- it is not necessarily in an exempt seller's interests to advise their customers about the right to exit the embedded network; and
- customers have the ability to opt out of their contract of sale or residential tenancy agreement if they do not wish to purchase electricity from an exempt seller.

There are, however, some difficulties with adopting this proposed approach, for example, the exempt seller may not know when the tenancy of rented premises changes.

Currently, licensed energy retailers offering market retail contracts are required to ensure that customers are given sufficient information to understand the rights, obligations and terms of the energy contract, before entering into an agreement with the energy retailer. This 'explicit informed consent' is required to ensure that a customer receives accurate, standardised and easy to understand information about the product or service that is on offer, and can make an informed decision on whether to enter into that contract.

The Department therefore proposes to enhance the existing obligation on exempt sellers, to require that an exempt seller:

- disclose all information relevant to the customer's rights and obligations under the proposed sale arrangements (including in relation to choosing an electricity retailer), in plain English; and
- ensure that consent is provided by someone who is competent to do so.

The obligation should also extend to all customers of an exempt seller.

This will go some way to addressing stakeholder concerns that customers (particularly vulnerable consumers from non-English speaking backgrounds and those with poor literacy) are not aware of their right to exit an embedded network and any practical barriers to doing so.

5.3.2 New developments

The Department acknowledges that the number of embedded networks is increasing, particularly for new apartment developments. The Department has also received feedback that customers who have purchased properties off the plan were not advised that their building would be configured as an embedded network until settlement.

The Department is aware that the ability of a customer within an embedded network, to choose a licensed retailer, largely depends on network configuration and the type of meter (if any) in place at their premises. These factors are usually determined at the time a building is constructed.

Within a particular building, each meter may have been assigned a unique identifier for wholesale market purposes. If this is the case, theoretically customers within that embedded network may easily be able to choose their own retailers.

Where meters within an embedded networks have not been assigned an identifier for wholesale market purposes, access to full retail electricity competition appears to be more challenging. Where there is no individual metering or the network configuration does not facilitate retail competition, it may be difficult and costly to retrofit the building in order to allow customers to have access to retailer of choice. It is likely that this cost burden will fall on the owner or operator of the building rather than its developer, and will ultimately be passed through to owners and occupants within the building.

The most effective way of affording customers the right to a choice of retailer is to ensure that network configuration and metering arrangements for new developments (and redevelopments) facilitate customer choice of retailer.

However, there are currently no Victorian based legislative building requirements for developers of multi-dwelling complexes (such as apartment buildings and shopping centres) to provide individual electricity metering for each strata title

The Department is not be able to fully address this issue through amendments to the GEO. The Department is, however, currently seeking stakeholder feedback on an issues paper for its *Building Better Apartments* Review, which will be progressed during 2016.

5.3.3 National regulation

In addition to ensuring suitable metering is available at premises, certain procedures must be followed in order to allow a customer to choose a new retailer. In the NEM, the Australian Energy Market Operator (AEMO) settles the market based on energy consumption data gathered from each meter with a NMI. The NMI is the unique number given to each individual electricity meter to record the electricity consumption at that site. However, deriving accurate and appropriate metering data from embedded networks is not that straightforward.

The Australian Energy Market Commission (AEMC) has recently made a new set of rules governing the administration of metering within embedded networks.⁴ These rules require, amongst other things, that embedded network operators appoint an accredited embedded network manager to oversee the provision of metering data from the network to AEMO, unless otherwise exempted by the AER through its *NSP Registration Exemption Guideline*.

These rules are expected to make it practically easier for customers to access choice of retailer by standardising the handling of metering data for individual sites within an embedded network, and by making it easier and more attractive for competing retailers to make offers to customers within embedded networks.

These requirements will apply in Victoria through the National Electricity Rules (NER) and the AER's *NSP Registration Exemption Guideline*, however, bringing embedded networks into compliance with these rules is expected to take some time. Further, in view of the fact that in Victoria the AER's complimentary *Retail Exempt Selling Guideline* does not apply, the application of these new rules may be insufficiently clear.

The Department proposes to address this issue in further detail in its Final Position Paper.

5.4 Recommendations

The Department sees considerable merit in measures to improve information provision to customers that may be sold electricity by exempt sellers.

The Department proposes enhancing existing exemption conditions, to require an exempt seller to obtain the explicit informed consent of a customer to the exempt selling arrangement before the customer enters into that arrangement. In obtaining this consent the customer must be made aware of its right to elect to purchase electricity from a licensed retailer of the customer's own choosing.

The Department will continue to liaise with our partner agencies to work towards all new apartments having suitable metering to enable effective retailer choice.

⁴ AEMC, *National Electricity Amendment (Embedded Networks) Rule 2015 No. 15*

6 Obligations on embedded network operators

6.1 Introduction

The GEO exempts an entity from distributing electricity within an embedded network, subject to conditions. These conditions include that the exempt person must observe all applicable provisions of the Electricity Distribution Code as if that person was a licensed electricity distributor. The Electricity Distribution Code itself sets out the applicable provisions for embedded network operators in section 1.3.5. Therefore, in this case, there is no ambiguity arising around which provisions of the Electricity Distribution Code are the 'applicable provisions' for embedded network operators.

In addition, embedded network operators are required to comply with any conditions of the AER's *NSP Registration Exemption Guideline* (which sets out which parties are not required to become registered and regulated monopoly service providers).

6.2 Stakeholder consultation

During the consultation phase, the Department engaged with industry groups and embedded network providers on issues relating to the obligations of embedded network operators.

The key issues raised by stakeholder were:

- there is uncertainty and inconsistency with regard to billing customers for network charges in embedded networks;
- there is some confusion surrounding what distribution and supply activities are captured by the exemption.

6.3 Proposed approach

6.3.1 Network Charges

The Department understands that there is inconsistency and confusion regarding what an embedded network operator may charge for the use of its network.

The AER's approach to this matter is that, where an embedded network exists within a commercial building, shopping centre, airport, residential apartment building or retirement village, network establishment and maintenance costs should be met through initial purchase/entry fees and ongoing maintenance fees for the relevant facility.

Given this, a charge for network services does not seem appropriate and may result in an overlapping of costs charged to the customer for the one service. There is no need for an embedded network operator to recover specific network charges from embedded network customers.

The Department sees merit in adopting a similar approach. The Department's draft position is to disallow network charging practices in embedded network sites.

6.3.2 Strata title lots

It has been apparent that in the time since the GEO was first made, a significant increase in the numbers of embedded networks has occurred. Whilst the lack of a registration database makes it difficult to ascertain exact numbers, a number of specialist companies now actively market embedded networks to property developers working on strata title developments such as apartment blocks. The Department often receives correspondence from members of the public on this issue, which largely pertain to new build apartments and the relationship with embedded networks operators and the re-selling or on-selling of electricity.

It appears that, in most cases, the legal entity responsible for ongoing operation of the embedded network will be the owners corporation for the strata lot. However, in many if not most cases this owners corporation will have appointed an agent to undertake the practical operation of the network

and any associated on-sale of electricity. The Department understands that this agent is frequently the embedded network operator that installed the network in the first instance.

Embedded networks are frequently built by the property developer prior to the development being inhabited and subsequent owners or occupiers have little practical choice about whether this is how electricity supply to individual premises should be undertaken (other than the choice of whether to buy in or not). As noted in the previous chapter, there are also concerns about the level of disclosure prospective owners and tenants receive about the embedded network.

This raises an important threshold question of whether these activities - for larger-scale strata title developments, where management of the embedded network is the primary business of the embedded network operator - are appropriately dealt with through the exemptions regime at all. For most intents and purposes, the embedded network operator will have a monopoly on supply of physical electricity to premises. Owners and occupiers of strata title lots are dependent on these networks for the supply of an essential service. While these operations have been undertaken on the premise that they constitute distribution of electricity on private premises (or within premises owned or occupied by the person engaging in the activity), in reality electricity is distributed to a number of different premises owned or occupied by persons other than the embedded network operator, which persons have little ability to bargain or independently choose their preferred supplier.

In the Department's view, distribution of electricity in this way should be held to constitute the provision of a public utility service, and should be licensed as such. The Department's first preference, therefore, is that embedded networks that serve strata title lots, of the kind described above, should be excised from the GEO and their activities licensed. The Department also considers that there is merit in also adopting this approach for equivalent exempt selling activities.

However, doing so would require many practical changes to be made. The existing licensing regime would need to be changed to accommodate the issue by the ESC of a licence of a new kind, and the ESC would need to have the systems and resources to administer a greatly increased number of licensees. There are also deemed licence conditions in the EIA that must be in all ESC retail and distribution licences. Several of these conditions, such as the obligation to make available and publish a standing offer, and publication requirements in relation to market offers, may not be appropriate for arrangements of this kind.

The Department will continue to work with the ESC on this issue. In the interim, however, the supply of electricity through an embedded network to strata title lots will remain regulated by the GEO, but subject to new requirements. These requirements would, at a minimum, include registration on the exemptions database, compliance with comparable obligations of licensed electricity providers, and (as discussed in chapter 9) membership of the ombudsman scheme as soon as transitional arrangements are phased in.

6.3.3 Caravan parks

Caravan parks are a distinct case which have traditionally required special treatment. Caravan park owners distribute and on-sell electricity to site tenants in order to equitably spread the costs of electricity supplies within the park.

Stakeholder feedback suggests that an increased level of regulation on the sale and distribution of electricity in caravan parks would impact quite significantly on the availability of residential and tourist based accommodation.

Caravan park tenants are highly mobile and generally only stay a short period of time. The transaction costs of supplying electricity on a fully utility regulated basis are significant.

For these reasons it is proposed that caravan parks will continue to be entitled to a deemed exemption for the distribution, supply and sale within their sites. As specified in chapter 3, a new specific class of retail and network exemption, with appropriate conditions, will be established for caravan parks. If the relevant caravan park owner is supplying electricity to person who principally reside in the caravan park, then the owner will be required to register with the ESC.

6.3.4 Adjacent properties

At present, the supply of electricity from one titled lot of land to an adjacent one is not covered by the GEO; any proposals for 'over-the-fence' distribution must seek a licence or a specific exemption. Several specific exemptions have been granted for such arrangements. Generally, these have been arrangements between for the supply of electricity between large industrial facilities where it has been clear that the parties have an equality of bargaining power and the technical competence to conduct their activities safely and reliably to the parties' satisfaction.

However, the Department has received increasing numbers of enquiries from community energy proponents investigating the potential to distribute energy between properties directly, in concert with renewable generation facilities. To date no exemption along these lines has been granted, but it is government policy to encourage community and renewable generation wherever possible.

This raises the question of whether a general exemption from the obligation to hold a licence should apply to 'over-the-fence' supply. The Department considers this to be a difficult question to answer categorically.

On one hand, in cases where an equality of bargaining power between the parties exists and sufficient competence to meet safety and technical requirements resides with the operator, arrangements which are mutually beneficial to the parties should not be impeded by government.

On the other hand, projects of this kind may involve severing the grid connection of one or more premises. This means that the owner of the lot or lots from which supply emanates will become the supplier of an essential service to the other lots, a function which is in the nature of a public utility service. While the owners and occupants of premises who enter into such an arrangement may be satisfied with the outcome, this is not necessarily true for subsequent owners and occupiers.

Furthermore, the exit or bankruptcy of the owner of a supplying lot may cause the cessation of supply to the other lots.

Generally, when a person buys land in Victoria, that person can expect that the land is serviceable by public utilities in the accustomed fashion. The permission of over-the-fence supply on a wide scale could substantially alter this expectation. This is a step not to be taken lightly.

This arrangement does not appear mature enough to draw general conclusions about the appropriate regulatory regime. For this reason, the Department does not consider it appropriate at this time that supply to adjacent properties be permitted by a general exemption.

However, as discussed in section 11, the Department does propose to develop a specific registrable exemption class for community energy projects. The scope of projects to be captured by this specific exemption class will be developed for the Final Position Paper, following consultation with stakeholders. The Department will also continue to consider individual projects on a case by case basis and may grant individual exemptions where necessary.

By working with the proponents of projects of these types, it is hoped that experience will reveal where real opportunities for beneficial arrangements lie, and where risks to be managed or regulated against also lie.

6.3.5 District scale schemes

District scale supply here is taken to refer to supply over several nearby properties, that may also traverse public land and easements. Essentially, a district scheme would be a distribution network similar to the existing licensed monopoly networks, albeit on a smaller scale.

The Department's position is that any network which seeks to cross or utilise public land and easements must be appropriately licensed by the ESC under the existing licensing regime. However, where innovative clean energy district scale schemes are proposed, the Department will work with proponents to overcome practical obstacles that may arise as novel proposals navigate the established regulatory regime.

6.4 Recommendations

Embedded networks serving multiple strata title lots should cease to be protected by the GEO, and should be transitioned to an appropriately designed licensing framework administered by the ESC.

Caravan park embedded networks will continue to be subject to a deemed exemption.

Distribution of electricity to adjacent properties will continue to be subject to individual exemptions. However, the Department will continue to monitor the development of new energy technologies and may issue special exemptions where appropriate to allow for trial and pilots of innovative energy supply models. Community energy projects will be subject to a registrable exemption.

District scale energy networks will continue to be subject to the current energy licensing framework.

7 Pricing

7.1 Introduction

Customers in embedded networks are subject to a form of price regulation under the GEO. The GEO states that an exempt seller may charge a customer no more than the price that would have been available to the customers under the applicable standing offer made by the local area retailer (otherwise known as the Pricing Rule). Price regulation is required due to limited competition in embedded networks (as discussed in chapter 5).

However, the gap between standing offers prices and generally available market offer prices has increased in recent years. The ESC has estimated that a customer can make significant savings by switching from a standing offer to a market offer.

The Department is concerned that the local standing offer may no longer provide an appropriate benchmark for the Pricing Rule.

7.2 Stakeholder consultation

During the consultation phase, the Department engaged with industry groups, consumer representative groups and community and renewable energy groups on the relevance of the Pricing Rule and how the GEO could better regulate the maximum amount an exempt seller is able to charge its customers.

The key issues raised with regard to the Pricing Rule and pricing generally were:

- customers of exempt sellers are not aware of the Pricing Rule and therefore unable to seek clarification on whether it is being applied;
- customers of exempt sellers are sometimes not provided with adequate information on bills and hence they are unaware of whether they are being charged in accordance with the Pricing Rule;
- customers of exempt sellers do not have access to assistance from an independent, third party in the event of a dispute regarding pricing; and
- the Pricing Rule needs to be flexible for consumers willing to pay more for renewable energy.

Most stakeholders suggested that a new methodology should be established for determining the maximum rate an exempt seller may charge its customers. Some stakeholders also advised that, at a minimum, there needs to be increased transparency around the way in which pricing information is disclosed to customers of exempt sellers, for example, improved billing standards and a product disclosure statement.

7.3 Proposed approach

There will be cases where full retail contestability is not practical or efficient and, in such cases, customers may require protection from the use of effective monopoly pricing power by their exempt seller. Accordingly, the Department proposes that the GEO will continue to specify the maximum rate an exempt seller may charge its embedded network customers.

However, the Department proposes that the ESC be tasked with formulating a new price cap benchmark based on commercial market data. This would better approximate a fair price for electricity and restrict the potential for exempt sellers to earn monopoly profits on electricity sales.

The revised Pricing Rule will, however, acknowledge that some exceptions must be made for customers who choose to pay more for the purchase of renewable electricity. This issue is also discussed in Chapter 11 in relation to community energy projects

Currently, the ESC publishes an annual schedule which prescribes the maximum charges that an embedded network operator may charge its customers. The ESC will continue to annually publish the applicable rates on its website.

7.4 Recommendations

The Department proposes amending the Pricing Rule. The Department proposes to task the ESC with formulating a new price cap benchmark based on commercial market data. This would act as the maximum price that an exempt seller would be allowed to charge its embedded network customers for energy consumption.

The Department acknowledges that the Pricing Rule will need to be flexible to allow for new business models, for example, to allow for consumers who may wish to pay a higher price for the benefit of renewable electricity.

8 Enforcement

8.1 Introduction

All deemed exemptions under the GEO, as well as individual exemptions, have conditions that must be met by the entity engaging in the activity in order to be protected by that exemption. If an exempt entity does not comply with the conditions of its exemption, the exemption no longer applies and the entity is undertaking the relevant activity without a licence. Under the EIA the penalty for operating without a licence is 1000 penalty units (approximately \$150,000) and 100 penalty units (approximately \$15,000) for each day after the day on which a notice of contravention is served by the ESC.

The ESC may also take administrative enforcement action, such as entering into agreements with the exempt entity to rectify the breach

These enforcement options are, however, limited compared to the enforcement regime that applies to licensed entities. This regime enables the ESC to:

- Impose a wrong disconnection penalty of \$5,000;
- serve penalty notices of up to \$20,000 for the contravention of energy sector consumer protections;
- publicly report non-compliances with energy sector obligations;
- accept court enforceable undertakings;
- issue enforcement orders.

8.2 Stakeholder consultation

During the consultation phase, the Department engaged with industry groups, consumer representative groups and community energy groups on the effectiveness and relevance of the ESC's enforcement powers.

The key issues raised by stakeholders were:

- consumer experiences suggest there are many exempt entities breaching their exemption conditions;
- exempt entities breaching their exemption conditions are not being reprimanded for their breaches; and
- given this, customers of exempt entities are receiving minimal levels of consumer protection and differing levels of service from their electricity provider.

Some submissions suggested that the ESC's enforcement powers should be enhanced so that it can effectively deal with exempt entities who operate in breach of the conditions of their exemption.

Other submissions were of the view that the ESC already has a sufficient suite of enforcement powers but refrains from applying them.

8.3 Proposed approach

The Department does not propose to amend the enforcement regime, applicable to the GEO and exempt entities, at this time.

As noted previously, there is little information about exempt entities, the activities being undertaken and the types of customers they serve. Extending the ESC's existing enforcement powers in relation to licensed entities to exempt entities may have unintended consequences. For example, the financial viability of an exempt entity may be jeopardised if that entity became subject to penalties of the magnitude that may be imposed by the ESC under the current regime. However, imposing a different (lesser) penalty regime for exempt entities may encourage business models structured to specifically to fall within the exemptions framework.

Accordingly, the Department considers that further information is required to determine the appropriate compliance and enforcement regime that should apply to the exemptions regime. This position will be reviewed following establishment of the public registration database and the enhanced consumer protections framework for the GEO.

8.4 Recommendation

The Department does not propose to amend the enforcement regime, applicable to the GEO and exempt entities, at this time. This position will, however, be reviewed as more information about exempt entities becomes available.

9 Dispute Resolution

9.1 Introduction

The jurisdiction of the Energy and Water Ombudsman Victoria (EWOV) only extends to customers of licensed retail, distribution and transmission bodies. This is because membership of an external alternative dispute resolution scheme is a licence condition under the EIA and the *Gas Industry Act 2001* and therefore does not apply to customers of exempt entities.

Instead, consumers supplied electricity by an exempt entity may utilise the Victorian Civil and Administrative Tribunal (VCAT) to resolve disputes that cannot be resolved directly with the entity. Customers who contact EWOV are often also referred to Consumer Affairs Victoria for advice.

The Department believes that EWOV has many advantages over VCAT in the resolution of energy-related disputes. EWOV is accessible, free for consumers, less litigious in its approach to resolving complaints and has expert knowledge of the energy regulatory framework.

9.2 Stakeholder consultation

During the consultation phase, the Department engaged with industry groups, consumer representative groups and community and renewable energy groups on how best to amend the GEO to allow for exempt entities and their customers gain access to independent, inexpensive dispute resolution.

The main issues raised by stakeholders were:

- access to a free and independent dispute resolution scheme is critical, particularly for vulnerable consumers and where disconnection is actual or imminent;
- EWOV, as the only energy-industry based, dispute resolution scheme, is best placed to handle disputes between exempt entities and their customers; and
- the best way of achieving this is by extending EWOV's jurisdiction.

9.3 Proposed approach

It is the Department's preliminary view that all electricity consumers obtaining grid sourced electricity, particularly those located within embedded networks, should have access to EWOV for concerns relating to their embedded network operator or exempt seller. Customers should also be made aware of their right to access this alternative dispute resolution body.

As discussed in the following chapters, the Department intends to further consult on whether the jurisdiction of EWOV should be extended for consumer disputes regarding products and services derived from an alternative energy selling business or community energy project.

The Department acknowledges, however, that there are some challenges associated with requiring embedded network operators and exempt sellers to join EWOV.

As a starting point, EWOV would be required to change its internal company charter and its constitution.

The annual membership fees associated with EWOV membership, an industry-based scheme, may be prohibitive for some smaller exempt entities and in some instances passed through to their customers. The Department is aware of this and will work closely with the ESC and EWOV to ensure that annual membership fees are proportionate to the scale of activity being undertaken by the exempt entity.

The Department is also aware of the need to ensure an equitable fee structure is developed so that current EWOV members do not unduly cross-subsidise future members. The Department will work closely with the ESC and EWOV to determine how best to achieve this.

The Department supports extending EWOV's jurisdiction, making it available to customers of embedded network operators and associated exempt sellers.

The Department will continue to work with the ESC and with EWOV to establish a membership category for these exempt entities.

Following extension of EWOV's jurisdiction, the Department will also introduce a new exemption condition requiring an exempt entity to inform a customer in writing at the time the customer enters the arrangement, of their right to access the services of EWOV's dispute resolution mechanism.

As discussed in more detail in chapters 10 and 11, the Department does not currently propose that EWOV's jurisdiction should be extended to include alternative energy sellers and community energy projects generally, but does see some merit in customers of SPPA providers being able to access the scheme.

10 Alternative Energy Selling

10.1 Introduction

The energy market has seen the entry of business groups seeking to provide energy consumers with services that supplement their typical supply of energy from the grid (alternative energy sellers). The demand for the activities proposed by alternative energy sellers, who operate under a diverse range of business models, continues to increase. This section of the paper discusses the most appropriate authorising framework for alternative energy sellers. The Department acknowledges the need to enable investment opportunities while ensuring that there are adequate levels of consumer protections available to consumers who choose to obtain alternative energy services.

Solar Power Purchase Agreements

The Department has been approached by a number of businesses seeking to offer new and innovative products and services that involve the sale of energy. The majority of these businesses to sell electricity generated from solar panels installed at a customer's home or business. This business model is referred to as a solar power purchase agreement (SPPA). It gives customers access to the benefit of solar panels through an arrangement with an SPPA provider.

More specifically, under an SPPA, the business provides, installs and maintains, at no initial cost, a solar panel system for a customer and, in exchange, the customer buys the electricity provided by the solar panels for an agreed price (usually below that which would be charged by a licensed electricity retailer) for an agreed period of time. Any electricity that is not used at the customer's site is exported into the local electricity network and the customer may get the benefit of the relevant feed-in tariff.

In December 2015, the Victorian Government amended the GEO to include a deemed exemption class that covers activities undertaken by SPPA providers. This move signalled that the Victorian Government is supportive of allowing businesses to offer SPPAs to Victorian energy consumers. The nature and terms of the deemed exemption were, however, to be reassessed during this stage of the GEO review.

In determining whether a deemed exemption class is the most appropriate way to authorise SPPAs in Victoria, the Department considered the guiding principles behind the SPPA business model.

The nature of the SPPA business model is different from that of grid sourced electricity (supplied through embedded networks). The electricity sold to a consumer via an SPPA is (at this stage) optional and supplements the electricity sold to a consumer by electricity retailers. Although both business models sell electricity to the consumer, under the former, the customer is more dependent on grid sourced electricity.

10.2 Stakeholder consultation

During the consultation phase, the Department engaged with industry groups, consumer representative groups and community and renewable energy groups on how best to formalise the authorisation framework for alternative energy selling.

The main issues raised by stakeholders were:

- authorising SPPAs under a small scale licence may deter investment into the market;
- there were inconsistencies between the AER authorisation framework and the Victorian authorisation framework; and
- access to a third party dispute resolution scheme should be a feature of alternative energy selling.

10.3 Proposed approach

Licensing under the existing regulatory framework does not appear to be a suitable authorising framework for SPPAs at this time. The existing SPPA exemption will be retained for the immediate future but it will become a registrable exemption rather than a deemed exemption.

The Department acknowledges, however, that this is a developing business model and the potential impacts on consumers and consumer protection issues associated with solar PPAs are evolving as product take-up increases.

Currently an SPPA is an energy service that generally supplements, but does not replace, a customer's supply electricity from the main grid. However, as the cost of SPPAs (and other 'behind the meter' alternative energy products) reduces (in comparison to the cost of grid sourced electricity) SPPAs (and other behind the meter electricity systems) may become more prevalent. For these customers, electricity supply from SPPAs will become their primary source of supply and greater protections (including through the licensing framework) may be warranted.

The Department acknowledges that the COAG Energy Council is conducting further work on the implications of 'behind the meter electricity supply' for consumers, and on appropriate consumer protections for these emerging business models.

As discussed in section 6.3.2, in relation to strata title lots, the option of applying tailored licence conditions to this type of activity is available. However, as also noted in that section, the existing licensing regime would need to be changed to accommodate the issue by the ESC of a licence of a new kind, and the ESC will need to have the systems and resources to administer a greatly increased number of licensees. The deemed licence conditions of the EIA would also need to be reviewed to assess their appropriateness to SPPAs. The Department also notes concerns that the cost of complying with licence obligations may prohibit investment into the market.

Accordingly, the Department will monitor and may review its position, taking into account the ESC's *Modernising Victoria's Energy Licence Framework* review and the work of the COAG Energy Council, and as further information regarding operation of SPPA business models becomes available.

Notwithstanding the above commentary, customers of SPPAs are currently protected under other regulatory instruments such as the:

- Australian Consumer Law and *Fair Trading Act 2012* (which deals with unfair contract terms, marketing, warranties and guarantees); and
- *Competition and Consumer Act 2010* (which deals with misleading, deceptive or unconscionable conduct).

SPPA providers in Victoria are also required to thoroughly inform customers about the nature of the service that they are buying and the protections they are entitled to. This is reflected in the following obligation, placed on SPPA providers through the GEO (and which will be retained) which states:

The exempt person must provide the Customer written notice, in plain English, at the time of entering into the agreement for the supply and sale of electricity that:

- i. the agreement is covered by the Australian Consumer Law;
- ii. includes a summary of the relevant rights of the Customer under that Law; and
- iii. is separate to the *customer's* contract with their licensed retailer and distributor, which are subject to the EIA.

The Department believes that, based on experience to date, retaining the class exemption and existing conditions for the activities undertaken by SPPA providers should, for the immediate future, ensure an adequate level of consumer protection, encourage new entry into the market and provide sufficient regulatory certainty.

However, the Department proposes moving this exemption from a deemed class exemption to a registrable class exemption. This will help the ESC and the Department keep record of:

- i. the number/degree of Victorian energy customers contracted under a SPPA;
- ii. the number/degree of businesses offering SPPA to Victoria energy customers; and

- iii. the amount of electricity capacity installed under a SPPA.

This will provide the ESC and the Department with valuable information that can be used to assess the nature of the market and the size of any potential consumer detriment in the future.

The retention of the SPPA exemption, does however mean that customers will not have access to EWOV for any dispute they may arise with their SPPA provider. This has potentially adverse implications for the quality of dispute resolution able to be offered by EWOV, particularly where a single or related companies are supplying both grid energy and SPPAs to the same customer, or where there are inter-linkages between both products in the context of a dispute

Accordingly, the Department considers that it would be beneficial for EWOV to consider opening its membership to solar PPA providers initially on a voluntary basis. It is hoped that solar PPA providers will see a benefit in being able to offer free and independent dispute resolution services to their customers. As the market develops, the Department and ESC will monitor disputes and complaints raised around SPPA products and may seek to further broaden EWOV's jurisdiction to require membership of the scheme. This assessment should take place regardless of the future authorising framework for SPPAs.

10.4 Recommendation

Activities relating to SPPAs will continue to be exempt from the requirement to hold a licence under section 16 of *the Electricity Industry Act 2000* under the GEO for the immediate future. However, this exemption class will become a registrable exemption rather than a deemed exemption.

11 Community Energy Projects

11.1 Introduction

The Department acknowledges that a supportive and accessible regulatory environment is essential to sustain the momentum of the community energy movement.

Community-owned renewable energy or community energy refers to projects where a community group initiates, develops, operates and benefits from a renewable energy resource or energy efficiency initiative. Community groups are formed based on a common interest or geographical region such as a town or suburb.

The Department is aware that several Victorian community groups are keen to pursue community energy business models operating in other Australian jurisdictions. In considering the most appropriate authorisation framework for community energy, it is necessary to look at the guiding principles behind such projects.

Community energy business models are most likely to be small-scale and behind-the-meter or below-the-load⁵. Although a diverse range of community energy models exist, the common features include:

- i. the consumer has a financial interest and/or legal interest in the energy generation;
- ii. the project functions as a not for profit venture; and
- iii. the energy generation is occurring either onsite, in adjacent properties or in the local area.

⁵ This is where the host site agrees to purchase/consume the energy generated over a period of time, thus avoiding the issue of selling any excess electricity generation back into the NEM. The scale of the activity needs to be less than the minimum load profile to minimise cost occurred with grid connection issues and/or alterations to the network. In the majority of approaches, the host site agrees to purchase the energy generated over the life of the project to avoid selling the energy into the energy market.

11.2 Stakeholder consultation

During the consultation phase, the Department engaged with industry groups, consumer representative groups and community and renewable energy groups on how best to authorise and encourage community energy projects.

The main issues raised by stakeholders were:

- authorising community energy projects under a small scale licence may be enough to deter investment in these projects;
- the Pricing Rule or price regulation pertaining to community energy projects will need to be flexible enough to allow for people who wish to pay more for community-sourced renewable energy;
- issues regarding consumer protections and recourse to a third party dispute resolution service are still unclear.

The Department understands that people are the foundation of any community energy project and community support is critical to its success. Many of the people involved will ultimately form the investor base, offer some financial support and/or volunteer their time and their expertise.

11.3 Proposed approach

Until there is evidence highlighting a sufficient problem that requires regulatory intervention, the Government will take a light handed approach to regulation of community energy projects. The Department recognises that there are several reasons why a light handed approach is warranted:

- Firstly, participation in a community energy venture is voluntary;
- Secondly, as a community energy project is engaged in supplying energy to its own members or constituents, there should not be a misalignment of incentives between the project and its customers.
- Thirdly, the cost of complying with licence obligations (including tailored obligations) may deter community support for these types of projects. A strong objective of the Victorian Government is to reduce regulatory costs wherever possible, whilst balancing public risk against overall public benefit. Placing licence requirements on community energy groups may result in increased regulatory costs without any clear benefits to consumers or the community energy movement.

Therefore, the Department proposes that, at this time, the authorising framework for community energy projects should be by exemption.

The Department proposes that the exemption will apply where the project is assessed as a community energy project by an independent body (possibly, the ESC). The Department proposes that this body be required to assess and be satisfied that the principal purpose of the provision of services by the entity seeking the exemption is to benefit the community it is servicing. The Department will further develop the criteria for making this assessment for the Final Position Paper, having regard to stakeholder submissions on the issue.

The Department acknowledges that the nature of community energy reduces risk of consumer detriment. The success of community energy projects relies on ongoing, workable community relationships between the organisation and its members that are geographically connected.

The Department does, however, propose that the conditions attaching to this exemption class will include a condition requiring that full disclosure of important information is made by the exempt entity to participants in the project. Fully informed customers and greater transparency about the terms and conditions in their contracts should minimise risk of participant disputes.

The Department also proposes a further exemption condition whereby project parties may mutually agree to prices outside of the Pricing Rule. This acknowledges stakeholder input which suggests that the Pricing Rule needs to be flexible enough for consumers to voluntarily pay higher charges and higher tariffs for the benefit of community renewable energy.

The introduction of an exemption class for community energy will, however, mean that consumers will not have recourse to EWOV. Similar to the framework being established for SPPAs, customers who opt in to community energy projects will need to turn to the ACL or to informal mediation with the community energy body as a means of addressing disputes. Given the nature of community energy projects, the Department does not, however, propose that at this time such projects should become subject to the Ombudsman scheme. The Department would welcome comments on this draft position.

The Department will monitor and may review its position, taking into account the ESC's *Modernising Victoria's Energy Licence Framework* review and the work of the COAG Energy Council, and as further information regarding operation of community energy projects becomes available.

11.4 Recommendation

The authorising framework for community energy projects will be developed under a registrable exemption and will be subject to a condition that requires the ESC to be reasonably satisfied that the principal purpose of the provision of services by the exempt entity is to benefit the community it is servicing.

12 Conclusion

The review has provided an opportunity for stakeholders to assess whether the GEO effectively regulates exempt activities. It has also provided an opportunity for stakeholders to reflect upon the terms, conditions and limitations applying to exempt entities.

The Department acknowledges that in some instances the requirement to hold a licence under section 16 of the EIA may not be warranted. Based on stakeholder feedback and other information, the Department does not believe there is an overall benefit from licensing all exempt activities and that there is still a role for the GEO in the regulatory framework.

The Department has, however, concluded that the current regulatory framework applying to exempt entities needs substantial improvement, and also needs to acknowledge and adapt to the changing energy market environment.

The Department welcomes submissions from all stakeholders on the draft positions set out in this paper.

12.1 Recommendations

Set out here are the recommendations made by the Department for the future GEO framework.

Recommendation 1

Those undertaking the following activities should continue to be exempt from the requirement to hold a licence under section 16 of the *Electricity Industry Act 2000*:

- the intermediary distribution and supply of electricity;
- the intermediary sale of electricity; and
- small-scale generation activities

The General Exemption Order should, however, be amended to establish 'registrable' categories of exemptions in addition to deemed and individual exemptions.

New exempt entities wishing to operate under a registrable exemption will need to register their activities on the ESC's public registration database. The benefit of the exemption will come into effect upon registering.

Existing exempt entities already operating under what will be a registrable exemption category will have a six month period to register on the ESC's public registration database.

In addition, deemed and registrable exemption categories will be divided into exemption classes tailored to specific activities, based on the AER's current exemption categories as adapted to reflect

Victoria's needs. This will include specific 'multiple activity' exemption categories to address certain new developments in the market such as community energy projects and solar PPAs.

Recommendation 2

The Department supports the need to clarify and specify what consumer protections are available to consumer purchasing electricity from an exempt seller. The ESC will be referred the task of specifying which provisions of the ERC (and other codes and guidelines as necessary) will apply to all exempt sellers (as core protections) and particular classes of exempt sellers (as additional protections).

Recommendation 3

The Department sees considerable merit in measures to improve information provision to customers that may be affected by exempt sellers.

The Department proposes enhancing existing exemption conditions, to require an exempt seller to obtain the explicit informed consent of the customer to the exempt selling arrangement before the customer enters into that arrangement. In obtaining this consent the customer must be made aware of its right to elect to purchase electricity from a licensed retailer of the customer's own choosing.

The Department will continue to liaise with our partner agencies to work towards all new apartments having suitable metering to enable effective retailer choice.

Recommendation 4

Embedded networks serving multiple strata title lots should cease to be protected by the GEO, and should be transitioned to an appropriately designed licensing framework administered by the ESC.

Caravan park embedded networks will continue to be subject to a deemed exemption.

Distribution of electricity to adjacent properties will continue to be subject to individual exemptions. However, the Department will continue to monitor the development of new energy technologies and may issue special exemptions where appropriate to allow for trial and pilots of innovative energy supply models. Community energy projects will be subject to a registrable exemption.

District scale energy networks will continue to be subject to the current energy licensing framework.

Recommendation 5

The Department proposes amending the Pricing Rule. The Department proposes to task the ESC with formulating a new cap benchmark based on commercial market data. This would act as the maximum price that an exempt seller would be allowed to charge its embedded network customers for energy consumption.

The Department acknowledges that the Pricing Rule will need to be flexible to allow for new business models, for example, to allow for consumers who may wish to pay higher charges and high tariffs for the benefit of renewable energy.

Recommendation 6

The Department does not propose to amend the enforcement regime, applicable to the GEO and exempt entities, at this time. This position will, however, be reviewed as more information about exempt entities becomes available.

Recommendation 7

The Department supports the move to extend EWOVs jurisdiction, making it available to most customers of embedded network operators and associated exempt sellers.

The Department will continue to work with the ESC and with EWOV to establish a membership category for these exempt entities.

Following extension of EWOV's jurisdiction, the Department will also introduce a new exemption condition requiring an exempt entity to inform a customer in writing at the time the customer enters the arrangement, of their right to access the services of EWOV's dispute resolution mechanism.

The Department will consult further on whether EWOV's jurisdiction should be extended to make it available to customers of alternative energy sellers or who participate in community energy projects.

Recommendation 8

Activities relating to SPPAs will continue to be exempt from the requirement to hold a licence under section 16 of the *Electricity Industry Act 2000* under the GEO for the immediate future. However, this exemption class will become a registrable exemption rather than a deemed exemption.

Recommendation 9

The authorising framework for community energy projects will be developed under a registrable exemption and will be subject to a condition that requires the ESC to be reasonably satisfied that the principal purpose of the provision of services by the exempt entity is to benefit the community it is servicing.

12.2 Next Steps

Further submissions are invited in response to the matters raised in this paper.

How to provide us with your comments

Written responses to the draft position paper are welcomed by 5pm on 22 August 2016.

Responses are to be submitted by email to: geo@delwp.vic.gov.au.

Any queries should be directed to Joy D'Souza, Senior Policy Officer, National Energy Market Development on 03 8392 7635 or Joy.D'Souza@delwp.vic.gov.au or Alex Badham, Acting Director, National Energy Market Development on 03 8392 7625 or Alex.Badham@delwp.vic.gov.au.

Next steps

Comments received through the draft position paper consultation process will help to inform the final position paper for release in late 2016.

Submissions due to Department	22 August 2016
Final Position Paper (subject to government approval)	Late 2016



Authorised by the Department of Environment, Land, Water and Planning
1 Spring Street Melbourne Victoria 3000
Telephone 136 186

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